IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE NINTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 23603 of 1999

Between:

A.Rangaiah, son of Bhadraiah, aged
about 61 years, resident of 18-19,

Kamalanagar, Dilsukhnagar, Hyderabad.

..... PETITIONER

AND

Transmission Corporation of A.P. Limited

Rep. By its Director, Vidyuth Soudha, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of Mandamus or any other appropriate writ declaring that the action of the respondent in imposing the punishment of 33% cut in the pension of the petitioner vide Memo. No. CE/DC/DM-V /673-P1/95-54, dated 4-10-1999 as arbitrary and illegal and direct the respondent to allow all consequential benefits including the differential amount of pension to the petitioner.

Counsel for the Petitioner: MR.V.SRINIVAS

Counsel for the Respondent: MR.SAMINENI KISHORE, STANDING COUNSEL

The Court made the following:

ORDER

Heard Mr.Srinivas, learned counsel appearing for the petitioner and also Mr.Samineni Kishore, learned Standing Counsel appearing on behalf of the respondent-corporation.

The petitioner herein, who has been working as Divisional Engineer at the relevant point of time having joined service much earlier in the year 1964 and acquired promotions having put in satisfactory service seeks to assail by way of Writ of Mandamus the impugned action of the respondent herein in imposing punishment of 33% cut in the pension as per the proceedings, dated 4-10-1999 as bad, illegal and void.

The case of the petitioner in brief is that he joined service in the year 1964 and having satisfied the service, he was promoted and ultimately he was working as Divisional Engineer. As per the proceedings, dated 3-6-1995, he was placed under suspension on the ground of disciplinary enquiry on certain charges. It is pointed out that no charge sheet was served on him. Inspite of the same, an Enquiry Officer was appointed and subsequently charges were framed which reads as follows:

> a) While working as Divisional Engineer, he had resorted to breach of rules and regulations of the Board which constitutes misconduct as per Regulation No.41 of the A.P.S.E.B. (Revised) Conduct Regulations.
>
> b) He had acted dishonestly in regard to the funds of the Board and property which constitutes misconduct as per regulation No.26 of the Conduct regulations.

On the basis of the said charges, without properly conducting an enquiry and taking up any evidence by either side submitted a report on 25-8-1997. In the meanwhile as against the said charges, the petitioner has filed a detailed

explanation denying all the allegations. Subsequent to the report, the petitioner was served a show cause notice dated 18-12-1998 to concur with the findings of the enquiry officer proposing to impose punishment of 33% cut in the pension. The petitioner has submitted his explanation on 22-2-1999. However, in the meanwhile since the petitioner has retired on attaining the age of superannuation in September, 1996, the said punishment of 33% cut in pension was ordered as per the proceedings, dated 4-10-1999. The main grievance of the petitioner is that the entire procedure as adopted is unique one and the enquiry is sought to be made without there being any valid grounds and the Enquiry Officer himself who collected the entire material without there being recording any evidence from either side and sought to place the entire finding in support of such material without providing proper opportunity to the petitioner. Even otherwise, the charges as framed by the Enquiry Officer do not satisfy any act or overt act, commission or omission which can amount to any misconduct as per the regulation. Therefore, the entire finding as arrived at by the Enquiry Officer himself on the charges framed on his own and collection of the material is wholly vitiated.

The learned Standing Counsel appearing on behalf of the respondent submits that having regard to the nature of charges framed and especially in view of the categorical findings which are quite sufficiently prove the various acts of commission or omission, amount to misconduct and therefore, the impugned orders are totally valid.

Having considered the submissions made and on perusal of the material, the question which falls for consideration in this Writ Petition is whether the imposition of punishment of 33% cut in the pension against the petitioner as per the proceedings, dated 4-10-1999 is valid.

There is no dispute of the fact that the petitioner worked as Divisional Engineer at the relevant point of time and he had put in 30 years of service by then. On certain allegations, disciplinary enquiry was conducted and he was placed under suspension on 3-6-1995 and thereafter an Enquiry Officer was appointed. There is no explanation forthcoming as to why the charges were not framed earlier to the appointment of Enquiry Officer. The petitioner had absolutely no opportunity to meet even any *prima facie* case to warrant any such enquiry. It is only the Enquiry Officer who has issued the aforesaid charges whereupon he

sought to conduct the enquiry. On a plain reading of the aforesaid charges, it is clear that there is no reference as to any action against the petitioner nor there is any basis for the charges for which the petitioner should be held responsible or answerable. It appears from the report of the Enquiry officer that there is lot of material gathered pointing out certain irregularities against the petitioner. Even the irregularities as sought to be made against the petitioner based upon so collected evidence do not amount to such grave nature to warrant any such punishment. Be that as it may be, the fact remains all the material as gathered by the Enquiry Officer is behind the back of the petitioner. The petitioner was not given any opportunity nor was asked to explain even in regard to finding as arrived at against him in the said report. Thus, the entire Enquiry report is behind the back of the petitioner. Admittedly, at the time of collection of material, the petitioner was not given any notice nor any charges were sought to be served on him to explain nor was he informed of the same. In the circumstances, it is quite apparent that the entire process as adopted by the Enquiry Officer is on its own which is wholly impermissible. The limited action and the limited power normally so conferred on the Enquiry Officer is only to restrict himself in respect of charges as framed, but not become Investigating Agency and collect any material against the delinquent officer. At no point of time the petitioner was not informed any such charges much less allegations which are made basis for arriving at finding in the report. It is only on the basis of the said report without following procedure and without giving notice, the punishment sought against the petitioner.

In view of the unique procedure adopted in this case, I do not find any justification in the impugned orders passed by the respondent nor the same is based on acceptable and valid material as required under the law. The very procedure is also not only contrary to the basic Principles of Natural Justice, but also even in the teeth of the mandate as contemplated under the Disciplinary Conduct Appeal Rules. In the circumstances, it is to be held that the entire impugned action is wholly unsustainable and liable to be set aside.

Accordingly, the Writ Petition is allowed and the impugned order, dated 4-10-1999 is set aside. No costs.

09-02-2005.

Hsd

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice, on this Wednesday, the Ninth day of February, 2005.

Asst. Registrar.

To

1. The Director,Transmission Corporation of A.P. Limited

Vidyuth Soudha, Hyderabad.

2. 2 CD copies.